IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 3478 of 2001

Between:

M/s Vijaya Wines and Bar(Licencee in Form FL-17, Bearing No.86)
Lalpuram Village, Guntur Rural mandal & District
rep.by its partner, R.Venkateswarlu.

..... PETITIONER

AND

1.Govt. of A.P., rep.by its Principal Secretary (Revenue Ex.III) . . .
Department Secretariat Buildings, Hyderabad
2.The Commissioner of Prohibition & Excise A.P.Hyderabad
3.The Prohibition & Excise Superintendent Guntur, Guntur Dist

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ order or direction, after calling for the records from the 1st respondent relating to its Memo No.6502/EX.III-2/99-3, Dt.24/8/1999 and the consequential demand notice issued by the 3rd respondent in his Rc.No.387/87/B3, Dt.1/2/2001 and quash the same and consequentially direct the respondents to desist from insisting the petitioner to pay a sum of Rs.6,39,387.10 ps along with penal interest towards the alleged differential licence fee.

Counsel for the Petitioner:MR.M.CHANDRASEKHAR REDDY

Counsel for the Respondents.: GP FOR PROHIBITION & EXCISE

The Court made the following :

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ORDER:

Heard both sides.

The petitioner herein, who is holding FL –17 licence and running Bar and Wine Shop, filed this Writ Petition *inter alia* challenging the impugned demand notice made by the 3rd respondent herein on 1-2-2001 and consequential dismissal of the revision filed by him before the 1st respondent on 24-8-1999.

The case of the petitioner is that he along with one Y.Ravi joined together and started business in the name and style as "Vijaya Wines and Bar". The petitioner was directed to pay the annual licence fee at the rate of Rs.36,000/- to be paid in six (6) bi-monthly installments at the rate of Rs.6,000/-. Later, the 3rd respondent issued notice in R.No. 387/87/B1, dated 27-11-1989, directing the petitioner to pay the differential licence fee of Rs.69,419-14 for the period commencing from 28-12-1987 to 30-11-1989 forthwith. The petitioner was further directed to pay an amount of Rs.12,000/- towards the 2nd bi-monthly installment of the annual licence fee for the year 1989-90 and also submit a fresh bank guarantee for Rs.60,000/- instead of Rs.30,000/- which was furnished earlier. The reason assigned by the 3rd respondent for making such a demand was that the licenced premises of the petitioner's Bar falls within the limits of the Guntur Municipality w.e.f. 28-12-1987 due to the inclusion of certain areas in Guntur Municipality as per G.O.Ms.No.944 M.A., dated 25-11-1987 and the annual licence fee would come to a sum of Rs.72,000/-. It is the further case of the petitioner that the licenced premises bearing Assessment No .729 of Lalpuram village has not been included within the territorial limits of Guntur Municipality, in the said notification or in any other subsequent notification till today. 3rd respondent issued demand notice dated 1-2-2001. The 1st respondent neither issued any notice to the petitioner nor given any opportunity to controvert the allegation, but without assigning any proper reason dismissed the revision. Therefore, assailing the same, the petitioner filed this Writ Petition.

The learned counsel for the petitioner vehemently submits across the Bar that the impugned order passed by 1st respondent does not give sufficient reasons for rejection of the petitioner claims that the shop of the petitioner situate beyond the limits of Guntur Municipality or within the limits of Guntur Municipality, nor does it show that the 1st respondent was issued notice to the petitioner, especially when the petitioner comes with a specific plea as to the very factual aspect in regard to the location of the premises.

In the facts and circumstances of the case, the revision authority ought to have passed the order after affording an opportunity to the petitioner and ought to have considered the explanation offered by the petitioner. The conclusions arrived at by the authority is not based on appreciation of the material available on record. That a part in view of the fact that the petitioner was not given any chance to ventilate his grievance, I am of the view, that it is suffice to direct, in the interests of justice, to dispose of the revision afresh after affording an opportunity of hearing to the parties.

In the circumstances, the impugned order is set aside and the writ petition is allowed by remitting the matter back to the 1st respondent for fresh disposal, in accordance with law, after giving opportunity to both the parties. No order as to costs.

---------- B.Prakash Rao, J.

4th November, 2004.
KM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Fourth day of November, Two Thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary , Govt. of A.P. . . . . (Revenue Ex.III)
Department, Secretariat Buildings, Hyderabad
2. The Commissioner of Prohibition & Excise A.P.Hyderabad
3. The Prohibition & Excise Superintendent Guntur, Guntur Dist

4.2CCs to G.P. for Excise, High Court Buildings, Hyderabad (OUT)

2.2CD copies

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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4th November, 2004.